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Four Seasons Environmental, Inc. and International Union of Operating Engineers, Local 926. Case 10–CA–164737

February 12, 2016

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
AND MCFERRAN

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed by International Union of Operating Engineers, Local 926 (the Union), the General Counsel issued the complaint on December 8, 2015, alleging that Four Seasons Environmental, Inc. (the Respondent) has violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union following the Union's certification in Case 10–RC–144025. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations of the complaint, and asserting affirmative defenses.

On January 5, 2016, the General Counsel filed a Motion for Summary Judgment. On January 12, 2016, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the Union's certification based on its objections to conduct alleged to have affected the results of the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate*

Glass Co. v. NLRB, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.¹

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with an office and place of business in Atlanta, Georgia and has been engaged in providing maintenance services for entities including the federal government.

The Respondent, in conducting its operations described above, annually purchases and receives at its Atlanta, Georgia facility goods valued in excess of \$50,000 directly from points outside the State of Georgia.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election held on February 19, 2015, the Union was certified on October 29, 2015, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time electricians, general maintenance workers, HVAC, plumbers/pipefitters, plumbers, pipefitters, carpenters/painters, millwrights, HVAC refrigeration, electronic technicians, lawn and garden personnel, personnel assistants, stationary engineers, general mechanics, groundskeepers, boiler technicians, gas operators and leads employed by the Employer at its facilities located at 1600 Clifton Road, NE, Atlanta, Georgia; 4770 Buford Highway, Chamblee, Georgia; 692 Webb Gin House Road, Lawrenceville, Georgia; and 3719 N. Peachtree Road, Chamblee, Georgia; but excluding all office clerical employees, guards and supervisors as defined by the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

About November 10, 2015, the Union requested by electronic mail that the Respondent recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of the unit.

¹ The Respondent's request that the complaint be dismissed is therefore denied.

Since about November 10, 2015, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.

We find that this failure and refusal constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since about November 10, 2015, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent, Four Seasons Environmental, Inc., Atlanta, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Union of Operating Engineers, Local 926 as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and condi-

tions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time electricians, general maintenance workers, HVAC, plumbers/pipefitters, plumbers, pipefitters, carpenters/painters, millwrights, HVAC refrigeration, electronic technicians, lawn and garden personnel, personnel assistants, stationary engineers, general mechanics, groundskeepers, boiler technicians, gas operators and leads employed by the Employer at its facilities located at 1600 Clifton Road, NE, Atlanta, Georgia; 4770 Buford Highway, Chamblee, Georgia; 692 Webb Gin House Road, Lawrenceville, Georgia; and 3719 N. Peachtree Road, Chamblee, Georgia; but excluding all office clerical employees, guards and supervisors as defined by the Act.

(b) Within 14 days after service by the Region, post at its facilities in Atlanta, Georgia, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 10, 2015.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 10 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. February 12, 2016

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with International Union of Operating Engineers, Local 926 as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All full-time and regular part-time electricians, general maintenance workers, HVAC, plumbers/pipefitters, plumbers, pipefitters, carpenters/painters, millwrights, HVAC refrigeration, electronic technicians, lawn and garden personnel, personnel assistants, stationary engineers, general mechanics, groundskeepers, boiler technicians, gas operators and leads employed by us at our facilities located at 1600 Clifton Road, NE, Atlanta, Georgia; 4770 Buford Highway, Chamblee, Georgia; 692 Webb Gin House Road, Lawrenceville, Georgia; and 3719 N. Peachtree Road, Chamblee, Georgia; but excluding all office clerical employees, guards and supervisors as defined by the Act.

FOUR SEASONS ENVIRONMENTAL, INC.

The Board's decision can be found at www.nlrb.gov/case/10-CA-164737 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

